

Tax Type: Property Tax
Issue: Charitable Ownership/Use

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 03-PT-0043
v.)	PIN 93-21-18-254-001
)	Tax Year 2002
CHANNING-MURRAY FOUNDATION)	
)	Dept. Docket No. 02-10-43
Applicant)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Mariah F. DiGrino and Era Laudermilk of the University of Illinois College of Law Clinics for Channing-Murray Foundation.

Channing-Murray Foundation (“applicant”) applied for a 2002 tax exemption for property located in Champaign County. The Champaign County Board of Review recommended that the entire property be exempt. The Department of Revenue (“Department”), however, determined that only a portion of the property should be exempt. The applicant timely protested the Department’s decision. The Department has conceded that the applicant is both a religious and charitable organization, but contends that a portion of the property is not being used for exempt purposes. The following three issues were raised during the hearing: (1) whether the applicant has sufficient indicia of

ownership to have standing to apply for the exemption; (2) whether a portion of the basement space is exempt; and (3) whether the Back Tower Room, which is where the caretaker lives, is exempt. For the following reasons, it is recommended that the entire property be exempt from taxes.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was incorporated in 1968. The applicant is located at 1209 W. Oregon in Urbana (“property”), which is on the campus of the University of Illinois. The applicant has been located there since its inception in 1957. (Applicant’s Ex. #1; Tr. pp. 24-29)

2. The applicant’s purpose includes serving as a campus ministry for Unitarian-Universalist students and others who might be interested in Unitarian-Universalism. It also serves to promote social justice and affirm diversity. (Applicant’s Ex. #1; Tr. p. 27)

3. The applicant is a sister organization to the Unitarian-Universalist Church of Urbana (“Church of Urbana”). The applicant and the Church of Urbana were legally affiliated until 1990. At that time, they entered into an agreement that provided more autonomy to both and allowed the applicant to pursue its own programming. (Applicant’s Ex. #3; Tr. pp. 29-30)

4. Prior to 1990, the Church of Urbana owned the property. Under the agreement, title to the property was transferred to a trust. Busey Bank is the trustee. (Applicant’s Ex. #3; Tr. pp. 29-30)

5. Under the agreement, the applicant continues to occupy the property, completely maintains the property, has complete control over the use and scheduling of

the property, assumes complete liability for the property, and maintains the insurance for the property. (Applicant's Ex. #3; Tr. pp. 33-34, 60)

6. Under the agreement, the applicant receives all proceeds from rents and usage of the property. The applicant does not pay rent for the use of the property. The property cannot be sold without the permission of both organizations. If the property is sold, the proceeds are placed in trust for campus ministry. (Applicant's Ex. #3; Tr. pp. 33-34, 60)

7. The agreement does not expressly address the property tax liability because the property has always been tax exempt. In 2002, a former part-time secretary for the Church of Urbana responded to an inquiry from the Champaign County Assessor's office and mistakenly informed them that the property had been sold. This resulted in the property tax assessment for 2002. (Dept. Ex. #1; Tr. pp. 34, 60)

8. The property is improved with a building, which is surrounded on two sides with a parking lot. The first floor of the building contains an entrance foyer, chapel, office and fireplace room. The basement contains an office, storage room, meeting room known as the "Peace Room," furnace room, two bathrooms, kitchen, and an area known as the "Red Herring" space, which contains tables and chairs. (Dept. Ex. #1; Tr. p. 25, 64)

9. The building also has two two-story towers known as the North Tower and Back Tower. The entrance foyer constitutes the first floor of the North Tower. The second floor of the North Tower has a room that is used for youth meetings. The second floor of the Back Tower has a room that is occupied by a person who acts as the caretaker/security person for the property. (Dept. Ex. #1)

10. The Department granted the exemption for the entire first floor, the North Tower, the Peace Room, the furnace room, and a proportionate amount of the land. (Dept. Ex. #1)

11. The entire building, including the basement, is open from 10:00 a.m. to 10:00 p.m., and the public is welcome to use the building for various activities. The basement is used for a variety of events including religious or social justice discussion groups, monthly meetings of the applicant's Board, various committee meetings, and social gatherings of the applicant's members and friends. (Tr. p. 35)

12. Between the hours of 11 and 3 on Mondays through Fridays when the University of Illinois is in session, the applicant operates the Red Herring Vegetarian Restaurant in the basement. The restaurant is not open during exam weeks and is not open during the summer. (Dept. Ex. #1; Tr. p. 39)

13. The restaurant serves primarily vegan food, which does not include any animal products such as milk, cheese or eggs. The remaining dishes are vegetarian; the applicant eliminates all traces of meat in its food. When a vegetarian dish is served, the applicant provides notice that the dish is not vegan. The applicant makes its ingredient lists and recipes available to those who inquire. (Tr. pp. 38, 86-87, 90-91)

14. The applicant began serving food on its premises in the early seventies under the name Red Herring Vegetarian Educational Food Service. At that time, it was the only place that provided a balanced vegetarian meal in Champaign County. The food was initially provided for free with a donation requested. (Tr. pp. 86-87)

15. In order to cover the expenses of operating the restaurant, the applicant began setting prices for its food. The Red Herring manager determines the prices in

consultation with the applicant's restaurant committee, which is a committee of the Board. (Tr. pp. 40, 87)

16. The staff of the restaurant consists of a few paid workers and volunteers. The staff is empowered to give a meal away for free if a person cannot pay. (Dept. Ex. #1; Tr. p. 41)

17. The restaurant has never generated a profit and accepts donations from its patrons. In order to fully cover its expenses, it receives support from the applicant's general fund. (Applicant's Ex. #8A, 8B; Tr. p. 41)

18. During the spring semester of 2002, the total income from the restaurant was \$19,545.24, and the total expenses were \$20,329.75, which was a net loss of \$784.51. (Applicant's Ex. #8A; Tr. pp. 42-46)

19. During the fall semester of 2002, the total income from the restaurant was \$24,168.64, and the total expenses were \$26,582.99, which was a net loss of \$2,414.35. (Applicant's Ex. #8B; Tr. pp. 42-46)

20. The goal of the restaurant committee is to serve food at the lowest possible price while trying to recoup expenses. Although it is designed to serve the student community, the restaurant is open to the general public. (Tr. p. 40)

21. Unitarian-Universalism is a faith that has existed for hundreds of years. Its members believe that each individual must pursue his or her own journey in terms of spirituality. The church does not dictate how to do that. The church accepts individuals who practice in the way that they feel religion should be practiced. (Tr. pp. 53-54, 89-90)

22. Unitarian-Universalists follow seven principles that serve as guidelines. Aside from these principles, there are no specific doctrines that must be followed. (Tr. pp. 89-90)

23. Two of the seven principles are (1) every human being has inherent worth and dignity, and (2) all life on the planet is part of an interdependent web, and each part of life affects another part of it. Because of these principles, many members have become vegetarians or vegans. They believe that avoiding the consumption of meat or animal products impacts their personal health, the environment, and the ethical treatment of animals. (Tr. pp. 36-37, 54-55)

24. The Unitarian-Universalists do not recruit members through an evangelical process. They attract people into the faith by presenting programs and activities that encourage people to come into their building and learn more about Unitarian-Universalists. The restaurant is one of the attractions. It draws people with similar beliefs who become involved in the applicant's religious and social programs. (Tr. pp. 37, 55-56, 88)

25. The room on the second floor of the Back Tower is the residence of a young adult who maintains the building and provides security. The room is approximately 133 square feet. The entire building is approximately 7,000 square feet. The room is 1.9% of the total square footage of the building. (Dept. Ex. #1; Tr. pp. 65-66)

26. The caretaker's responsibilities include opening the building in the morning and closing it at night, assisting members who use wheelchairs, and responding quickly to security issues. The caretaker also is required to have an understanding of and commitment to Unitarian-Universalism in order to be able to answer questions and

engage in discussions concerning Unitarian-Universalism. (Applicant's Ex. #7; Tr. pp. 71-74, 92-93)

CONCLUSIONS OF LAW:

The first issue raised by the Department is whether the applicant has sufficient indicia of ownership to have standing to apply for the exemption. In determining ownership for property tax purposes, courts are concerned with the "realities of ownership" rather than legal title. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 273 (1996). The key elements of ownership are control of the property and the right to enjoy its benefits. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 505 (1992).

In the present case, the applicant has met these criteria. The agreement between the applicant and the Church of Urbana specifically indicates that the applicant has control of the property and enjoys its benefits. The applicant has occupied the property since the applicant was initially organized, and the agreement ensures the applicant's right to possess it. The applicant maintains and operates the chapel and has complete control over the use and scheduling of the chapel and property. The applicant receives all proceeds from the usage of the property. The applicant also assumes complete liability for the property. The applicant has substantial control over the future disposition of the property. Because the applicant controls the management and use of the property and has the right to enjoy its benefits, the applicant has standing to apply for the exemption.

The applicant has requested a religious exemption from the property tax pursuant to section 15-40 of the Property Tax Code ("Code"), which provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, * * *. 35 ILCS 200/15-40.

In the alternative, the applicant contends that the property is exempt because it is used for charitable purposes. The provision of the Code that allows exemptions for charitable purposes provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity. 35 ILCS 200/15-65(a)

In deciding whether property is exempt under these provisions, the primary use of the property, rather than its incidental use, must be considered. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 65-66 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 16 (1924). In order to qualify for the exemption, the property must actually be used for the exempt purpose. Illinois Institute of Technology at 64. Intention to use is not the same as actual use. Id.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

In the present case, the applicant has met its burden of showing that the space that is at issue is primarily used for exempt purposes. Except during the four hours on the weekdays that the restaurant is open, the basement space is being used in a manner similar to the use of the remainder of the property. During the summers, exam weeks,

and eight of the twelve hours that the building is open on weekdays during each semester, this space is used for religious or social justice discussion groups, Board meetings, committee meetings, and fellowship. These are the same activities that take place in the rooms on the first floor. Even while the restaurant is open, the use of the Red Herring space is not strictly limited to people who patronize the restaurant. The space is available to anyone who wants to use it for meetings or fellowship. The primary use of this space is for exempt purposes.

If the property is devoted to an exempt purpose, any incidental use of the property for another purpose does not defeat the exemption when it is not for profit. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944). The applicant does not use the restaurant with a view to profit. When the restaurant first opened, the applicant provided the food for free and requested a donation. The restaurant was started in response to its members' need for a vegetarian restaurant because many members practice vegetarianism or veganism as part of their faith. Unitarian-Universalists do not evangelize, and the restaurant provides another opportunity for potential members to learn more about the applicant's programs and Unitarian-Universalism. The use of the portion of the basement for the restaurant does not affect the applicant's entitlement to the exemption.

The room in the Back Tower should also be exempt because its use is incidental to the primary use of the property. The room is approximately 133 square feet, which is less than 2% of the total square footage of the entire building. The caretaker who lives in the room maintains the building and provides security. The building is open to the public 12 hours a day, and his presence is necessary to ensure the safety of the people who enjoy

the use of the building. He also has experience as a youth counselor and engages in discussions with the students regarding Unitarian-Universalism. His services facilitate the applicant's operations and are incidental to the primary use of the property. See Highland Park Women's Club v. Department of Revenue, 206 Ill.App.3d 447 (2nd Dist. 1990) (concession stands and gift shop exempt because they were a mere adjunct to the Park's operation).

Recommendation:

For the foregoing reasons, it is recommended that the entire parcel be exempt from property taxes.

Linda Olivero
Administrative Law Judge

Enter: September 23, 2004